

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

18 CR 759 (RMB)

5 SAVRAJ GATA-AURA,

Arraignment

6 Defendant.

7 -----x
8 New York, N.Y.
9 May 23, 2019
1:00 p.m.

10 Before:

11 HON. RICHARD M. BERMAN

12 District Judge

13
14
15 APPEARANCES

16
17 GEOFFREY S. BERMAN

United States Attorney for the
18 Southern District of New York

19 VLADISLAV VAINBERG

MARTIN BELL

Assistant United States Attorneys

20
21 RANDY ZELIN

Attorney for Defendant

22
23 Also Present:

24 ERIN CUNNINGHAM - Pretrial Services Officer

JOLDAN ANDERSON - Special Agent FBI

1 (Case called)

2 THE COURT: Good afternoon. I think we need to start
3 with an arraignment. Is that your understanding as well?

4 MR. ZELIN: It is, your Honor.

5 THE COURT: Let me get the pronunciation correct. Is
6 it Gata-Aura?

7 MR. ZELIN: Yes, your Honor.

8 THE COURT: May I ask you both if you have received a
9 copy of this document, superseding indictment.

10 MR. ZELIN: If your Honor please, I did receive a copy
11 of the indictment from the government this morning. The Court
12 was kind enough to afford me the opportunity to confer with my
13 client prior to the first scheduled arraignment time of noon.
14 I did have an opportunity to review the indictment with my
15 client.

16 THE COURT: Did you wish to have me read it this
17 afternoon or did you want to waive a public reading?

18 MR. ZELIN: Respectfully waive a public reading, and
19 we are prepared to enter a plea of not guilty to the
20 superseding indictment.

21 THE COURT: Mr. Gata-Aura, do you agree with that?
22 First, of all, you went over the indictment with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: You are entering a plea of not guilty?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: All right. Please be seated.

2 MR. ZELIN: Thank you.

3 THE COURT: Let's figure out where this is all headed.
4 Mr. Vainberg or is it Mr. Bell?

5 MR. BELL: Good afternoon, Judge. Since this is
6 essentially doubles as a presentment as well, it may behoove
7 everybody for the following to happen first: for Mr. Gata-Aura
8 to be advised of certain of his rights, as typically happens in
9 magistrate court, particularly his right to counsel --
10 obviously, he has retained counsel -- and his right not to
11 answer any questions.

12 THE COURT: If I know Mr. Zelin, and I think I do, he
13 probably has been over all them. Were there any other issues?

14 MR. BELL: No, your Honor, just a matter of getting
15 those in the records. I'm sure Mr. Zelin has been over those
16 as well as.

17 MR. ZELIN: I have, your Honor. My client is fully
18 apprised of all of his constitutional rights. I believe that
19 he understands them. I do appreciate the government calling
20 that to your Honor's attention. We would waive any further
21 need for --

22 THE COURT: Allocution?

23 MR. ZELIN: -- allocution on the record, if your Honor
24 please.

25 MR. BELL: Thank you, your Honor. We will also note

1 that in the case of persons like Mr. Gata-Aura who are citizens
2 of a foreign country, consular notification is often required.
3 We will put on the record here that we have notified the
4 British consulate of Mr. Gata-Aura's arrest.

5 THE COURT: Because he is a citizen of the UK?

6 MR. BELL: That is correct, your Honor.

7 THE COURT: All right.

8 MR. BELL: What perhaps should happen next is for the
9 parties to be heard with respect to bail.

10 THE COURT: Before we get to that, I would like to
11 understand the superseding indictment somewhat.

12 MR. BELL: Sure, your Honor.

13 THE COURT: It supersedes, as I understand it, an
14 indictment that is currently pending involving Mr. Moore. Is
15 that right?

16 MR. BELL: To be clear, the Moore indictment is still
17 pending, it is still active. These are additional charges as
18 to a new defendant. They were essentially superseded to this
19 case because they deal with the same set of operative facts.
20 But it is not something that would tend to either disturb the
21 Moore charges nor for today's purposes prompt Moore to be
22 arraigned on the superseder, as Moore is not named within it.

23 THE COURT: But it may impact it. That was my first
24 impression. We have a trial scheduled with Mr. Moore on June
25 3rd. I was just supposing that I were Mr. Moore's counsel,

1 which of course I'm not, how would I react to this superseding
2 indictment.

3 MR. BELL: I would suspect, Judge, that at the end of
4 the day Mr. Moore, whose position has been that he has wanted a
5 speedy trial, will not have an application with respect to the
6 scheduling in light of the Gata-Aura indictment, and we would
7 proceed accordingly and Mr. Gata-Aura's case can proceed on its
8 own track.

9 THE COURT: They are almost identical. I don't have
10 that kind of photographic memory, but I read the superseding
11 indictment this morning, and it struck me as substantially
12 similar if not the same to the Moore indictment.

13 MR. BELL: They are, Judge. To situate things, both
14 Mr. Gata-Aura and Mr. Moore, as alleged, are charged with
15 having assisted Renwick Haddow or partnered with Renwick Haddow
16 and having solicited investors into the business known as Bar
17 Works in similar fashion, having recruited people under them to
18 essentially make investment pitches to investors. Both are
19 charged with having done so on false pre-tenses, most notably
20 concerning the identity of the management of Bar Works.
21 Factually, your Honor is of course right that they are related.

22 What might make the most sense is this. It may make
23 sense for your Honor to place upon the docket an order to Mr.
24 Moore's counsel essentially asking whether he has any further
25 application in light of the Gata-Aura superseding indictment.

1 My expectation is that he will not, particularly because he has
2 sought a speedy trial to this point and because the government
3 is not suggesting that the existence of the Gata-Aura case
4 should push Moore's case further into the future or that the
5 two things have to be tried as one trial.

6 My colleague Mr. Vainberg spoke very briefly to Mr.
7 Moore's counsel, David Garvin Esq., this morning and was not of
8 the belief that he had any sort of application to put in. But
9 it may make sense for your Honor to make an order accordingly
10 just to be safe.

11 Assuming for the moment that Mr. Garvin does not want
12 to order the scheduling of his client's trial, then we are
13 looking at two trials here. They are two trials that would be
14 pretty short, two trials that would be pretty similar.
15 Assuming of course that they go all the way there, which
16 statistically that may not happen.

17 It seems to me, Judge, that we would be able to
18 proceed apace with the Moore trial, which is scheduled for the
19 3rd, and to schedule further proceedings with respect to this
20 defendant as we ordinarily would, which is to say we can make
21 representations with respect to what discovery there is to be
22 produced, with respect to how long it might take Mr. Gata-Aura
23 and his attorney to review those materials, and set a further
24 schedule for pretrial conference and motions and the like.
25 That, your Honor, respectfully, would be the course that the

1 government sees going forward from here.

2 THE COURT: You have more information than I if you
3 have spoken to Mr. Moore's counsel. When I was posing in
4 chambers to myself what might happen, I was thinking that if I
5 were Mr. Moore's counsel, I might want to take a look at all
6 the discovery that gets produced in this case, for example.

7 MR. BELL: That is a very valid point, Judge. To that
8 point I would say this. The discovery is going to be
9 substantially identical because we, in producing materials to
10 Mr. Moore, essentially produced the bulk of what we have with
11 respect to the conspiracy as a whole, which includes both
12 persons. Between that and the fact that there is not a single
13 indictment that includes both Moore and Gata-Aura, this seems
14 to be going on two parallel but staggered tracks.

15 That said, should Mr. Moore come back in response to
16 your Honor's order that we propose and suggest something
17 otherwise. Of course, the government would be happy to
18 participate in whatever discussions follow. But I suspect
19 strongly, given our conversations with Mr. Moore so far as well
20 as his prior position, that we are probably headed for a June
21 3rd trial start with respect to Mr. Moore.

22 THE COURT: I would modify your suggestion somewhat.
23 I think it would be important to have Mr. Moore's counsel in
24 court with you. And in Mr. Zelin wants to be here, he is
25 certainly welcome to being here to put on the record these

1 issues and if he does still want to go forward, that it is very
2 clear.

3 MR. BELL: To that end, I will note two things. One
4 of those is that we currently have a May 29th pretrial
5 conference scheduled and we may want to fold that into that
6 conference in light of the second issue, which is of course
7 that Mr. Garvin is an out-of-state attorney. He is located in
8 Florida, and it may not be the most efficient thing to bring
9 him up here twice.

10 THE COURT: That is the schedule, Mr. Zelin, that we
11 have in the Moore case. The next step there is Wednesday, May
12 29, at 11:00. You are certainly welcome to be here. In fact,
13 I think it would be helpful if you are available. Or if you
14 don't want to come --

15 MR. ZELIN: Thank you, your Honor. May I have
16 permission to check my phone?

17 THE COURT: Sure.

18 MR. ZELIN: I am available on May 29th at 11 o'clock,
19 your Honor.

20 THE COURT: I prefer to do it that way. I might put
21 out an order something like: In view of the superseding
22 indictment, the conference on May 29th will consider any
23 implications that one indictment might have on the other, if
24 any.

25 Now, I think you were heading to a discussion of bail.

1 Mr. Bell, is that where you were heading?

2 MR. BELL: I was, Judge, yes. The parties have agreed
3 upon a proposed package which I will have Mr. Vainberg, who is
4 closer to it, introduce for you.

5 MR. VAINBERG: Your Honor, I believe the parties have
6 reached agreement on a package that incorporates the conditions
7 in the pretrial services report along with a personal
8 recognizance bond of \$1 million secured by \$5,000 in either
9 cash or a confession of judgment against an asset worth more
10 than \$5,000, and two co-signers, one of whom we understand to
11 be the defendant's wife.

12 THE COURT: What else?

13 MR. VAINBERG: With a time period of 10 days to
14 satisfy those conditions pending which time the government has
15 no objection to the defendant being released.

16 THE COURT: What about things like his passport?

17 MR. VAINBERG: As listed in the pretrial services
18 report, he must surrender his passport.

19 THE COURT: What I am trying to get you to do is
20 enumerate all of the conditions on the record.

21 MR. VAINBERG: Yes, of course. He would have to
22 report to pretrial services as directed, surrender his travel
23 documents and make no new applications for travel documents,
24 restrict his travel to the Southern District of New York and
25 the Eastern District of New York, seek or maintain employment

1 as approved by pretrial services, not consume excessive
2 alcohol, not contact the victims of this offense, and not
3 engage in any activity related to the instant offense,
4 particularly investment solicitation, during the pendency of
5 the case.

6 THE COURT: A small point, Mr. Zelin. Is alcohol an
7 issue here? I did I read somewhere that your client consumes
8 alcohol daily. Or am I just misremembering?

9 MR. ZELIN: Your Honor, I'm looking at page 3 of the
10 pretrial services report. It indicates, and I quote, "The
11 defendant indicated no history of mental health treatment,
12 substance abuse history, alcohol abuse or substance abuse
13 treatment."

14 THE COURT: Right. But the very next sentence.

15 MR. ZELIN: "The defendant consented to a urinalysis."
16 Oh, it states that he consumes alcohol. I'm sorry, your Honor.
17 "He states that he consumes alcohol daily." I do see where
18 that is indicated.

19 THE COURT: That raises to me not a red flag but
20 certainly a question. Is there any question, any issue there?

21 MR. ZELIN: Not to my knowledge, your Honor. But he
22 will comply with all of the requirements that were set forth by
23 the government. To the extent that it includes no excessive
24 alcohol, there will not be excessive alcohol.

25 THE COURT: We have pretrial services here, I believe,

1 right?

2 MS. CUNNINGHAM: Yes, your Honor.

3 THE COURT: Is that an issue that you all discussed?

4 MS. CUNNINGHAM: I did not prepare the report. I'm
5 just here representing the office. We would just ask that
6 there be no excessive alcohol in case there are any issues with
7 regards to any arrest-related things involving alcohol or any
8 problems at home involving alcohol, and if so, that it be
9 reported to the Court.

10 THE COURT: When it says report to pretrial services,
11 what does that mean essentially? Show up in your office, and
12 if so, how often?

13 MS. CUNNINGHAM: Yes, your Honor. As directed,
14 depending on the defendant's compliance, he will be required to
15 come to the office. That could be once a month, that could be
16 weekly depending on how he is doing, or it could be once a
17 quarter, with telephone and web reporting as well.

18 THE COURT: Mr. Zelin, what is your sense? For the
19 moment let's assume there were no other case. What kind of
20 time frame would you see this proceeding on from your
21 perspective?

22 MR. ZELIN: Your Honor, it was my inclination and my
23 suggestion to the government that the government and I meet and
24 confer. At this juncture I have absolutely no understanding as
25 to the scope and universe of discovery. I would respectfully

1 request that I be given some opportunity to discuss that with
2 the government before I commit to any time frames.

3 If I could circle back to the conditions of release.
4 It is my understanding, your Honor, that my client's passport
5 was taken by the government this morning when he was taken into
6 custody.

7 MS. CUNNINGHAM: Yes, your Honor, that is our
8 understanding as well, that the agent has it.

9 MR. BELL: Judge, if you like, we can give you an
10 outline of discovery or we can just meet and confer and get
11 back.

12 THE COURT: I think Mr. Zelin has a good point. You
13 and he should meet and confer on whatever you want to meet and
14 confer on, discovery to be sure. That would be a perfect item
15 to take up on the 29th.

16 MR. BELL: Very good.

17 THE COURT: As a first item or early item.

18 MR. ZELIN: Yes, your Honor.

19 MR. BELL: That's fine, Judge. Thank you.

20 THE COURT: Are there any other issues that the
21 government has or the defense, I'll start with the government,
22 before we adjourn?

23 MR. VAINBERG: Not for the government other than an
24 application.

25 THE COURT: Yes.

1 MR. ZELIN: Nothing further from the defense, your
2 Honor. Thank you.

3 THE COURT: Is this a speedy trial application?

4 MR. VAINBERG: Yes, your Honor.

5 MR. ZELIN: Your Honor, I have had an opportunity to
6 discuss my client's rights with regard to the Speedy Trial Act.
7 My client has authorized me to waive the time between now
8 and -- we were prepared to go out further than May 29th, but
9 certainly between now and May 29th. I would respectfully
10 submit that your Honor determine that it is with good cause and
11 in the interests of justice for the time to be waived.

12 THE COURT: I will in fact find under 18 United States
13 Code section 3161 that the proposed adjournment to May 29,
14 2019, joined in by both sides, is appropriate and warrants
15 exclusion of the adjourned time from speedy trial calculations.
16 I further find that the exclusion is designed to prevent any
17 possible miscarriage of justice, to facilitate these
18 proceedings, and to guarantee effective representation of and
19 preparation by counsel for both parties. Thus, the need for
20 exclusion and the ends of justice outweigh the interests of the
21 public and the defendant in this matter in a speedy trial
22 pursuant to 18 U.S.C. sections 3161(h)(7)(A) and (B).

23 Unless there is anything further, we can be adjourned
24 for today. I'll see you all on the 29th.

25 (Adjourned)